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OFFICE OF PETITIONS

In re Patent No. 6,358,072 :
Issue Date: 03/19/2002 :
Application Number: 09/652,982 : DECISION ON PETITION
Filing Date: 08/31/2000 :
For: AIRCRAFT IGNITION CABLE :
CONNECTOR :

This is a decision on the petition under 37 CFR 1.378(b),¹ filed on August 13, 2012, to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is dismissed.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or

¹ A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must include

(1) the required maintenance fee set forth in § 1.20(e) through (g);
(2) the surcharge set forth in § 1.20(I)(1); and
(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

(b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued on March 19, 2002. The first maintenance fee was timely paid. The second maintenance fee could have been paid during the period from March 19 through September 21, 2009, or, with a surcharge, during the period from September 22, 2009 through March 19, 2010. The patent expired at midnight on March 19, 2010 for failure to timely pay the second maintenance fee.

Petitioner, *pro se*, asserts that the delay in payment of the maintenance fee was unavoidable due to financial difficulties.

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable".² A patent owner's failure to pay a maintenance fee may be considered to have been "unavoidable" if the patent owner "exercised the due care of a reasonably prudent person."³ This determination is to be made on a "case-by-case basis, taking all the facts and circumstances into account."⁴ Unavoidable delay under 35 U.S.C. § 41(b) is measured by the same standard as that for reviving an abandoned application under 35 U.S.C. § 133.⁵ Under 35 U.S.C. § 133, the Director may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Director to have been "unavoidable". Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.⁶ However, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.⁷ In

² 35 U.S.C. § 41(c)(1).

³ Ray v. Lehman, 55 F.3d 606, 608-09 (Fed.Cir.), cert. denied, -- U.S. ---, 116 S.Ct. 304, L.Ed.2d 209 (1995).

⁴ Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

⁵ In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (PTO Comm'r 1988).

⁶ Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

⁷ Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

view of In re Patent No. 4,409,763,⁸ this same standard will be applied to determine whether "unavoidable" delay within the meaning of 37 CFR 1.378(b) occurred.

This petition does not satisfy the requirement of 37 CFR 1.378(b)(3). The statements presented in the petition fail to satisfy the showing required to establish unavoidable delay within the meaning of 37 CFR 1.378(b).

Petitioner has not presented a sufficient showing of unavoidable delay resulting from financial hardship. A showing of unavoidable delay based upon financial condition must establish that the financial condition of the responsible party during the entire period of the delay was such as to excuse the delay.⁹ A complete showing is required of petitioner's, or the party responsible for payment of the maintenance fee's, financial condition including all income, expense, assets, credit, and obligations which made the delay from March 19, 2010 until the filing of the petition on August 13, 2012 in payment of the maintenance fee, unavoidable. Petitioner must provide verified copies of any available documents or records covering the entire period between March 19, 2010, and August 13, 2012.

The showing must also enumerate the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Statements from all persons who contributed to the delay are also required, and must be verified by including a declaration according to 37 CFR 1.68. Furthermore, petitioner should identify the party responsible for making the payment.

In summary, the showing of record is inadequate to establish unavoidable delay. As petitioner has not shown that it exercised the standard of care observed by a reasonable person in the conduct of his or her most important business, the petition will be dismissed.¹⁰

Petitioner is cautioned to avoid submitting personal information in a patent application that may contribute to identity theft. If personal information such as social security numbers, bank account numbers, or credit card numbers are included in documents submitted to the USPTO (other than a check or credit card

⁸ 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd sub nom. Rydeen v. Quigg, 748 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992).

⁹ See Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

¹⁰ See note 6, supra.

authorization form PTO-2038 submitted for payment purposes), petitioners should consider redacting such personal information from the documents before submitting them to the USPTO. This type of personal information is never required by the USPTO to support a petition or an application. Petitioner is advised that any information submitted in an application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, information from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

In summary, the showing of record has been considered, but does not rise to the level of unavoidable delay. Petitioner has not carried the burden of proof to establish to the satisfaction of the Director that the delay in payment of the second maintenance fee was unavoidable. Since petitioner has not shown unavoidable delay, the petition will be dismissed.

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable.

The \$400.00 petition fee for seeking reconsideration is not refundable. Any request for refund should be in writing to the address noted below.

The address in the petition is different than the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address (form enclosed) should be filed if the correspondence address needs to be updated.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at 571-272-3231.



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